

January 9, 2006

Mr. Edgar D. Bailey, CHP, Chief
Radiologic Health Branch
California Department of Health Services
P. O. Box 997414
Sacramento, CA 95899-7414

Dear Mr. Bailey:

I am responding to your February 8, 2005 letter to then Director Paul Lohaus regarding radioactive waste brokers. I apologize for the delayed response.

We shared your letter with staff from the Office of Nuclear Material Safety and Safeguards. Our understanding is that your request centers on three main issues:

- (1) Issuance of a generic communication to all radwaste brokers informing them of their need for a license in each regulatory jurisdiction in which they pick up radwaste and ship the radwaste as an exclusive use shipment;
- (2) Include in the generic communication information on broker and licensee regulatory roles in preparation of shipments;
- (3) A regulatory interpretation of whether private carriers must conform to 10 CFR Part 20.

Generic communications regarding items (1) and (2) have been previously issued, and we recommend that you use them in enforcement activities as you deem necessary. A summary of the previous generic communications is enclosed for your use. Further, item (2), is also addressed in NUREG 1556, Volume 18.

We are currently evaluating item (3) for possible inclusion in a future generic communication or other appropriate action and expect to complete our evaluation by March 31, 2006. We will keep you informed of the results of our evaluation. Thank you for your interest in these matters.

Sincerely,

/RA/
Janet R. Schlueter, Director
Office of State and Tribal Programs

Enclosure:
As stated

E. D. Bailey

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January 9, 2006

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NRC Licensee Use of Brokers to Ship Low-level Materials

- Brokers can provide a useful service. However, **NRC licensees should be aware that using brokers to consign shipments does not necessarily absolve NRC licensees from their responsibilities.**
 - Shipment generally involves two activities:
 - the first is the familiar transport itself, in which materials are physically moved from one location to another. Note that the transport of low-level materials is exempt from NRC regulation (10 CFR Part 71.14), but is regulated under U.S. Department of Transportation (DOT) regulation (49 CFR Subchapter C).
 - the second and less obvious activity is transfer, an NRC licensed activity under 10 CFR 30.41, in which possession of licensed material is transferred from one authorized licensee to another.
 - **NRC holds a licensee responsible for licensed material under its possession until the transfer of that material to another licensee authorized to possess the material is completed.** If transport is involved in the transfer, the **transfer is completed at the end of transport**, when the material is received and accepted by the (licensed) consignee.
 - Brokers may establish themselves as the single consignor for consignments aggregated from multiple NRC shipping licensees (note: DOT rules restrict loading in transit if the surface dose rate for any package exceeds 200 mrem/h), sign the shipping papers, consign the conveyance used as an exclusive use, and perform other shipper functions, without being licensed by NRC. **However, since there can be no transfer of licensed material to an unlicensed broker, the licensees, not the broker, are responsible for their material during transport consigned by an unlicensed broker. NRC investigation of any transport-related incident or non-compliance would involve primarily the NRC licensees. The broker would be viewed as an agent of the NRC licensees.**
 - **Alternatively, NRC licensees may, by mutual agreement, transfer possession of their licensed material prior to transport to a broker that is licensed by NRC to possess the material at the site(s) of transfer.** Brokers who then consign or transport the material off-site are responsible for the material during transport. **The NRC licensees' responsibilities would be limited to the extent they participated in preparing the shipment.** Any NRC investigation of transport-related incident or non-compliance would involve primarily the NRC licensed broker.
 - Brokers who act as private carriers (i.e., transport NRC licensed material under their possession in their own vehicles) must be licensed by NRC to possess the material at the site(s) of consignment and during transport.
- Given the flexibility in transfer and transport arrangements, **all parties should explicitly agree to their roles and responsibilities in the transfer of possession, and transport, of NRC licensed material prior to shipment.**
- NRC views on broker use and transfer and transport of high-level materials are provided in Information Notices 80-32 and 04-13, respectively.
- Agreement States may or may not have similar views for appropriate Agreement State licensee and broker roles and responsibilities in the transfer and transport of Agreement State licensed material, depending on their reciprocity and material transfer and transport requirements, policies and enforcement practices.

Enclosure